

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§318.1 - 318.9, 318.21 - 318.30, 318.40 - 318.43, 318.60, and 318.61.

Sections 318.1, 318.2, 318.5, 318.9, 318.22, 318.41, 318.42, and 318.61 are adopted *with changes* to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3857). Sections 318.3, 318.4, 318.6 - 318.8, 318.21, 318.23 - 318.30, 318.40, 318.43, and 318.60 are adopted *without changes* to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2015, the 84th Texas Legislature passed House Bill (HB) 2031 and HB 4097. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater. HB 4097 addresses seawater desalination for industrial purposes.

In HB 2031, the legislature declared that: "With this state facing an ongoing drought, continuing population growth, and the need to remain economically competitive, every effort must be made to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water." The legislature also declared that: "In this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." To that end, the legislature stated the purpose of HB 2031 was to "...

streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination."

In HB 2031, the legislature created new Texas Water Code (TWC), Chapter 18, to address marine seawater desalination projects. HB 2031 also amended TWC, §5.509, Temporary or Emergency Order Relating to Discharge of Waste or Pollutants; TWC, §5.551, Permitting Procedures; Applicability; TWC, §7.302, Grounds for Revocation or Suspension of Permit; TWC, §11.0237, Water Rights for Instream Flows Dedicated to Environmental Needs or Bay and Estuary Inflows; TWC, §11.082, Unlawful Use: Civil Penalty; TWC, §11.0842, Administrative Penalty; TWC, §11.121, Permit Required; TWC, §16.053, Regional Water Plans; and TWC, §26.0291, Water Quality Fee. In addition, HB 2031 amended Texas Health and Safety Code (THSC), Chapter 341, Subchapter C, by adding THSC, §341.0316, Desalination of Marine Seawater for Drinking Water, and repealed TWC, §16.060, Desalination Studies and Research.

TWC, §18.003(a), requires a person to obtain a permit to divert and use state water that consists of marine seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a total dissolved solids (TDS) concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter (mg/L). TWC, §18.003(b), creates an exemption from permitting to divert and use marine seawater if TWC, §18.003(a), does not apply. In addition, TWC, §18.005(c),

requires a person to obtain a permit to discharge: 1) treated marine seawater into a natural stream in this state or a lake, reservoir, or other impoundment in this state; or 2) waste resulting from the desalination of marine seawater into the Gulf of Mexico.

HB 2031 also directs the commission to issue a bed and banks permit to convey marine seawater in any flowing natural stream or lake, reservoir, or other impoundment. The bill prohibits: 1) the discharge of treated marine seawater into a flowing natural stream and impoundment for conveyance purposes without a discharge permit issued under TWC, Chapter 18; and 2) the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater in a bay and estuary under the expedited permit process as allowed by TWC, Chapter 18. A person has the option to submit an application under TWC, Chapter 11 or 26 to seek a permit to divert or discharge in a bay or estuary.

Further, HB 2031 directs the commission to adopt rules to expedite permitting and related processes for the diversion of marine seawater and the discharge of both treated marine seawater and waste resulting from the desalination process, in accordance with TWC, Chapter 18. In addition, the bill requires the commission to establish reasonable measures to minimize impingement and entrainment associated with the diversion of marine seawater.

Finally, HB 2031 requires the Texas Parks and Wildlife Department (TPWD) and the

Texas General Land Office (GLO) to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination process. The commission must adopt rules designating diversion and discharge zones by September 1, 2020. Until such time as the commission adopts rules designating diversion and discharge zones, an applicant for a permit to divert marine seawater or discharge waste resulting from the desalination process must consult with the TPWD and the GLO regarding the point(s) of diversion and discharge.

HB 4097 relates to seawater desalination projects. This bill creates TWC, §11.1405, Desalination of Seawater for Use for Industrial Purposes, and TWC, §26.0272, Permits Authorizing Discharges from Certain Seawater Desalination Facilities; and amends TWC, §27.021, Permit for Disposal of Brine from Desalination Operations or Drinking Water Treatment Residuals in Class I Injection Wells, and TWC, §27.025, General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals, to address seawater desalination for industrial purposes.

TWC, §11.1405(a), requires a person to obtain a permit to divert and use state water that consists of seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a TDS concentration based on a yearly average of samples taken monthly at the water

source of less than 20,000 mg/L. TWC, §11.1405(b) creates an exemption from permitting to divert and use seawater if TWC, §11.1405(a) does not apply. When a permit application is required, TWC, §11.1405(e) specifies that the application does not require a finding of water availability and TWC, §11.1405(f) requires the permit to be consistent with the commission's adopted environmental flow standards in 30 TAC Chapter 298, Environmental Flow Standards for Surface Water. TWC, §11.1405(h), directs the commission to adopt rules to expedite permitting and related processes for the diversion of seawater.

In addition, TWC, §26.0272(b), indicates that TCEQ may issue a permit for the discharge of water treatment residuals from the desalination of seawater into the portion of the Gulf of Mexico inside the territorial limits of the state. TWC, §26.0272(c), specifies that prior to issuing a permit, TCEQ must evaluate the discharge of water treatment residuals from the desalination of seawater into the Gulf of Mexico for compliance with the state water quality standards, requirements of the Texas Pollutant Discharge Elimination System (TPDES) program, and applicable federal law. TWC, §26.0272(d), indicates that permits may be individual or general. TWC, §26.0272(d), also specifies that for individual permits, an application review procedure, at a minimum, must comply with the requirements of TWC, Chapter 5, Subchapter M; and the commission must comply with the requirements of TWC, §26.040, for a general permit.

TWC, §27.021, allows TCEQ to issue an individual Class I injection well permit authorizing the disposal of water treatment residuals produced by the desalination of seawater. TWC, §27.025, allows TCEQ to authorize a Class I injection well under a general permit for the disposal of concentrate produced by the desalination of seawater. TWC, §27.025, specifies that the general permit must include any requirements necessary to maintain delegation of the federal underground injection control program administered by TCEQ.

In October 2015, the commission held a stakeholder meeting to solicit comments regarding the implementation of HB 2031 and HB 4097. The executive director based these adopted rules on consideration of the comments received from the stakeholders, sound science and other public interest and relevant factors.

In corresponding rulemakings published in this issue of the *Texas Register*, the commission also adopts new sections in 30 TAC Chapter 39, Public Notice; 30 TAC Chapter 295, Water Rights, Procedural; and 30 TAC Chapter 297, Water Rights, Substantive to implement HB 2031 and HB 4097.

Section by Section Discussion

General Comments

The major substance of this adopted chapter was developed from existing regulations related to the permitting process such as 30 TAC Chapters 39, 50, 55, 281, and 305.

They were then revised to remove requirements that don't apply to wastewater discharges, to expedite the existing permitting process for wastewater discharges, and to incorporate only the required procedural elements in TWC, §18.005(e)(1) - (3).

The chapter is organized into four subchapters: General Requirements for Marine Seawater Desalination Discharges; Treated Marine Seawater Discharges; Off-Shore Discharges; and Near-Shore Discharges. This organizational structure allows for clearly and separately defined permitting procedures for each type of permit.

Some key terms, which are defined in the adoption, will help improve understanding of this preamble: "Off-shore discharges" are the discharge of wastewater from a marine seawater desalination project into the Gulf of Mexico where the point of discharge is located three or more miles seaward from any point located on the coast of Texas; and "Near-shore discharges" are the discharge of wastewater from a marine seawater desalination project into the Gulf of Mexico where the point of discharge is located less than three miles seaward from any point located on the coast of Texas.

Subchapter A: General Requirements for Marine Seawater Desalination Discharges

§318.1, Applicability and Purpose

Adopted new §318.1, identifies the purpose of Chapter 318, which is to establish an expedited permitting process for new, renewal, and amendment applications for treated marine seawater discharges, off-shore discharges, and near-shore discharges that originate from a marine seawater desalination project. These types of discharges

may, alternatively, be authorized under the provisions of TWC, Chapter 26 and 30 TAC Chapter 305. Adopted new §318.1 also identifies which portions of the chapter apply to near-shore discharges. These types of discharges are governed by the TPDES program and as such must be processed in accordance with the Memorandum of Agreement between TCEQ and the United States Environmental Protection Agency (EPA). Lastly, adopted new §318.1 states that this chapter does not apply to discharges of waste resulting from the desalination of marine seawater into a bay, estuary, or fresh waterbody. This provision complies with TWC, §18.005(f).

§318.2, Definitions

Adopted new §318.2, defines words and terms that are used in the chapter. The definitions for "Off-shore discharges" and "Near-shore discharges" are discussed earlier in this Section by Section Discussion and are consistent with TWC, §18.005(e)(2), with additional clarification related to determining the three-mile delineation between off-shore and near-shore discharges. Other definitions that would benefit from further discussion are "Facility" and "Marine seawater desalination project." The term "Facility" includes all contiguous land and fixtures, structures, or appurtenances used for the collection, transportation, and treatment of marine seawater and the storage, transportation, and discharge of treated marine seawater and wastewater from a marine seawater desalination project. The term "Marine seawater desalination project" is limited to the operation that desalinates marine seawater.

Desalination plants in other areas of the world are often co-located with power plants. The power plants also have wastewater discharges. Power plant discharges would not be authorized under the expedited process in the adopted rules because the power plant does not desalinate marine seawater. Additionally, other operations may be occurring at the site, such as a water bottling operation or an operation that uses the desalinated water in an industrial process. Wastewater generated by the bottling operation or the industrial operation would not be authorized under the expedited process in the adopted rules because the bottling plant and industrial operation do not desalinate marine seawater. Conversely, the operation that desalinates marine seawater may generate multiple types of wastewater, such as brine concentrate which is sometimes called reject water, filter backwash wastewater, and domestic wastewater from restrooms at the desalination operation. These wastewater discharges, if they are near-shore discharges or off-shore discharges, could be authorized under the expedited process in the adopted rules because they are generated by the operation that desalinates marine seawater.

These definitions are crucial for limiting the applicability of the adopted rules to only wastewaters generated by the operation that desalinates marine seawater, not wastewater generated by other operations such as a co-located power plant or water bottling plant.

§318.3, Application Requirements

Adopted new §318.3, requires the owner and the operator, if the operator is a different entity, to apply for the permit. The original application and three copies must be submitted to the executive director on forms provided by the executive director. The remaining portions of adopted new §318.3 identify the contents of the permit application. It is the intent of the executive director to develop an application form specific to treated marine seawater discharges and off-shore discharges processed under this chapter. Developing an application form specific to these discharges allows the executive director to collect and review information relevant to these discharges. This will assist in reducing the application review time for these permit applications.

§318.4, Application Fees and Water Quality Fees

Adopted new §318.4, identifies the application fees for each type of permit action and identifies other regulations for the water quality fee. The application fees are consistent with fees in 30 TAC §305.53 for minor facilities subject to the EPA's categorical standards. The water quality fees are consistent with the fees for marine seawater desalination plants that obtain a permit under existing procedural rules.

§318.5, Permit Conditions

Adopted new §318.5, identifies other regulations that are applicable to these permits, including 30 TAC Chapter 307 (Texas Surface Water Quality Standards) as required by TWC, §18.005(d)(1).

§318.6, Amendment of a Permit

Adopted new §318.6, defines the types of amendments and modifications, who can initiate amendments, specifies the contents of an amendment application, and the effect of an amendment application on the expiration of the existing permit. Adopted new §318.6 also specifically allows an applicant who files a major amendment application to simultaneously request a renewal of the permit. This provision allows the permittee to get a full five-year permit following a major amendment rather than retaining the expiration date of the current permit.

§318.7, Renewal of a Permit

Adopted new §318.7, specifies the timing for submitting a renewal application, the effect of a renewal application on the expiration of the existing permit, and a requirement that a renewal application must request continuation of the same requirements and conditions of the expiring permit.

§318.8, Other Permit Actions

Adopted new §318.8, identifies other regulations that are applicable to these permits for the following permit actions: permit transfers; permit denial, suspension, and revocation; permit cancellation; and corrections to permits.

§318.9, Discharge Zones for Near-Shore and Off-Shore Discharges

Adopted new §318.9, requires an applicant to include documentation of the results of

consultation with the TPWD and the GLO regarding the outfall locations in the permit application for near-shore discharges and off-shore discharges. This requirement only applies to new permit applications and amendment applications that propose a new outfall or a new location for an existing outfall.

Subchapter B: Treated Marine Seawater Discharges

§318.21, Applicability

Adopted new §318.21, identifies the application types that this subchapter applies to. In addition to applications seeking authorization for treated marine seawater discharges, this subchapter also applies to applications for a single permit to authorize both treated marine seawater and off-shore discharges.

§318.22, Application Review for Treated Marine Seawater Discharges

Adopted new §318.22, identifies the administrative and technical review process that the executive director will use. The application will be assigned a permit number and reviewed for administrative completeness within five business days of receipt. If an application is not administratively complete, the applicant will be notified by email and must provide a response within five business days of the request for additional information. If the applicant fails to provide the additional information by the deadline, the application will be considered withdrawn unless there are extenuating circumstances. The administrative review process is expedited by reducing the review period and using email for incoming and outgoing correspondence with applicants.

After the application is administratively complete, it will undergo a technical review for a period of time not to exceed 30 business days from the date the application is declared administratively complete. If an application is not technically complete, the applicant will be notified by email and must provide a response within the timeframe established by the technical review staff. The timeframe for submitting additional technical information can vary based on the level of complexity of the data requested. If the applicant fails to provide the additional information by the deadline, the executive director may return the application. The applicant can request that the commission determine the sufficiency of the technical data prior to having the application returned. The technical review process is expedited by reducing the review period and using email for incoming and outgoing correspondence with applicants. Additionally, developing an application form that is specific to marine seawater desalination discharges will assist the executive director in conducting an expedited technical review. After the application is declared technically complete, the executive director will prepare a draft permit and technical summary unless a recommendation is made to not grant the application. The adopted rule describes the contents of the technical summary. The draft permit and technical summary will be emailed to the applicant for a 10-day review period. The public notice and comment procedures are adopted in new 30 TAC §39.902.

§318.23, Public Meeting

Adopted new §318.23, specifies that public meetings held on applications under Chapter 318 are subject to the provisions outlined in 30 TAC §55.154. Notice of a public meeting must comply with the requirements in adopted new §39.902.

§318.24, Public Comment Processing

Adopted new §318.24, identifies other regulations that prescribe how the executive director will process timely filed public comments. The executive director will respond to all timely filed public comments. Late comments will be added to the application file but will not be processed.

§318.25, Action by the Executive Director

Adopted new §318.25, specifies that actions by the executive director on applications under this subchapter are subject to the provisions outlined in 30 TAC §§50.133, 50.135, and 50.137.

§318.26, Motion to Overturn Executive Director's Decision

Adopted new §318.26, specifies that Motions to Overturn the Executive Director's decision on applications under this subchapter are subject to the provisions outlined in 30 TAC §50.139.

§318.27, Request for Contested Case Hearing on an Application

Adopted new §318.27, identifies the application actions that are subject to contested

case hearings and specifies that requests for a contested case hearing on those applications under Chapter 318 are subject to the provisions outlined in 30 TAC §§55.201, 55.203, 55.205, and 55.209.

§318.28, Direct Referrals

Adopted new §318.28, specifies that direct referrals on applications under Chapter 318 are subject to the provisions outlined in 30 TAC §55.210.

§318.29, Action by the Commission

Adopted new §318.29, specifies that actions by the commission on applications under Chapter 318 are subject to the provisions outlined in 30 TAC §§50.113, 50.115, 50.117, 50.119, and 55.211.

§318.30, Contested Case Hearing Proceedings

Adopted new §318.30, identifies other regulations that prescribe how contested case hearings are conducted.

Subchapter C: Off-Shore Discharges

§318.40, Applicability

Adopted new §318.40, specifies that this subchapter applies to applications seeking authorization for off-shore discharges. However, as noted in adopted new §318.21, if an application is seeking authorization for both off-shore discharges and treated

marine seawater discharges, the application is subject to the requirements in adopted new Subchapter B.

§318.41, Application Review for Off-Shore Discharges

Adopted new §318.41, identifies the administrative and technical review process that the executive director will use. The application will be assigned a permit number and reviewed for administrative completeness within five business days of receipt. If an application is not administratively complete, the applicant will be notified by email and must provide a response within five business days of the request for additional information. If the applicant fails to provide the additional information by the deadline, the application will be considered withdrawn unless there are extenuating circumstances. The administrative review process is expedited by reducing the review period and using email for incoming and outgoing correspondence with applicants.

After the application is administratively complete, it will undergo a technical review for a period of time not to exceed 30 business days from the date the application is declared administratively complete. If an application is not technically complete, the applicant will be notified by email and must provide a response within the timeframe established by the technical review staff. The timeframe for submitting additional technical information can vary based on the level of complexity of the data requested. If the applicant fails to provide the additional information by the deadline, the executive director may return the application. The applicant can request that the

commission determine the sufficiency of the technical data prior to having the application returned. The technical review process is expedited by reducing the review period and using email for incoming and outgoing correspondence with applicants. Additionally, developing an application form that is specific to marine seawater desalination discharges will assist the executive director in conducting an expedited technical review.

After the application is declared technically complete, the executive director will prepare a draft permit and technical summary unless a recommendation is made to not grant the application. The adopted rule describes the contents of the technical summary. The draft permit and technical summary will be emailed to the applicant for a 10-day review period. The public notice and comment procedures are adopted in new 30 TAC §39.903.

§318.42, Action by the Executive Director

Adopted new §318.42, specifies that actions by the executive director on applications under this subchapter are subject to the provisions outlined in §§50.133, 50.135, and 50.137.

§318.43, Motion to Overturn Executive Director's Decision

Adopted new §318.43, specifies that Motions to Overturn the Executive Director's decision on applications under this subchapter are subject to the provisions outlined

in §50.139.

Subchapter D: Near-Shore Discharges

§318.60, Applicability

Adopted new §318.60, identifies the application types that this subchapter applies to.

§318.61, Application Review and Processing for Near-Shore Discharges

Adopted new §318.61, explains why an expedited permitting process will not be codified in this chapter; identifies other regulations that prescribe how near-shore discharges will be reviewed and processed; and states that the executive director will make every reasonable effort to expedite the application review within the current framework.

Final Regulatory Impact Analysis Determination

The commission has reviewed the adopted rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225(a) because it does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). The following is a summary of that review.

Texas Government Code, §2001.0225 applies to a "major environmental rule" adopted

by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector or the state.

The legislature enacted HB 2031, creating TWC, Chapter 18, which relates to marine seawater desalination. HB 2031 states that the purpose of the new law is to remain economically competitive in order to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water. More specifically, the legislature stated the purpose of HB 2031 was to "... streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination."

Therefore, the specific intent of the adopted rulemaking is to add procedures for the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the process for these permits. The adopted rules in Chapter 318 are for the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the processes for obtaining a permit to discharge treated marine seawater and waste resulting from the

desalination process under TWC, Chapter 18. The adopted new rules will protect the health and safety of aquatic and wildlife resources, as well as water quality, however, the adopted rules will not adversely affect the economy, a sector of the economy, productivity, competition, or jobs within the state or a sector of the state. Accordingly, the commission concludes that the adopted rulemaking does not meet the definition of a "major environmental rule."

Even if this rulemaking was a "major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather creates an expedited process under state law to ensure efficient regulatory oversight, while comprehensively protecting the state's natural resources. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not adopted under the TCEQ's general rulemaking authority. This rulemaking is adopted under specific state statutes enacted in HB 2031. Therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that analysis. The specific purpose of the adopted rulemaking is to modify the TAC to implement the changes to the TWC, from HB 2031, which creates procedures for the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the process for these permits. The adopted rulemaking will substantially advance this stated purpose by adopting rules in a new Chapter 318 that are intended to articulate and expedite the permitting process for marine seawater desalination discharges in accordance with HB 2031 and TWC, Chapter 18.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, Texas Government Code, Chapter 2007 does not apply to these adopted rules because these rules do not impact private real property. In HB 2031, the legislature expressed that "In this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would

otherwise exist in the absence of the regulations. For marine seawater, there are no real property rights that have been granted for use of the water in the Gulf of Mexico. These actions will not affect or burden private real property rights because of the amount of water in the Gulf of Mexico, or a bay or arm of the Gulf of Mexico.

Consistency with the Coastal Management Program

The commission has reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201, *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the adopted rules include: discharges must comply with water quality-based effluent limits; discharges that increase pollutant loadings to coastal waters must not impair designated uses of coastal waters and must not significantly degrade coastal water quality, unless necessary for important

economic or social development; and to the greatest extent practicable, new wastewater outfalls must be located where they will not adversely affect critical areas.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies. The adopted rules are consistent with these CMP goals and policies because these rules do not create or have a direct or significant adverse effect on any CNRAs, and because the adopted rules do not allow a discharge from marine seawater desalination projects into or adjacent to water in the state, except in accordance with an individual permit issued by the commission.

Individual permits issued under these adopted rules will include effluent limitations to ensure compliance with water quality standards. Further, the expedited permitting process in these adopted rules cannot be used to authorize discharges of wastewater into bays and estuaries. Wastewater must be discharged into the Gulf of Mexico, and applicants must consult with the TPWD and the GLO regarding the outfall location(s).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

Public Comment

The commission held a public hearing on June 21, 2016, in Austin. The comment period closed on July 5, 2016. The commission received comments from AEM the

Woodlands (AEM); Asociacion Amiga; Clean Water Action (CWA); Coastal Conservation Association Texas (CCA-Texas); EV Houston Newspaper (EVHN); Glenrose Engineering, Inc. (GEI); the Honorable A. R. Senac, Chambers County Commissioner, Precinct 4 (Commissioner Senac); San Marcos River Foundation (SMRF); Save Our Springs Alliance (SOS); Texas Conservation Alliance (TCA); Texas Desalination Association's Marine Subcommittee (TDA Marine Subcommittee); TPWD; Viva! The Woodlands Magazine (Viva!); joint comments submitted by the Galveston Bay Foundation (GBF), National Wildlife Federation (NWF), and the Sierra Club Lone Star Chapter (Sierra Club); 41 individuals who submitted personalized comments through NWF; 940 individuals who submitted identical comments through NWF; 32 individuals who submitted personalized comments through the Sierra Club; and 1,299 individuals who submitted identical comments through the Sierra Club. The comments submitted by Commissioner Senac do not in any manner necessarily reflect the opinion of Chambers County Commissioners Court or Chambers County.

TDA Marine Subcommittee and one individual supported the rules. Generally, AEM, Asociacion Amiga, CWA, CCA-Texas, EVHN, GEI, Commissioner Senac, SMRF, SOS, TCA, TPWD, Viva!, GBF, NWF, Sierra Club and 2,279 individuals supported the rules but were concerned that the rules were not sufficiently protective. Three individuals did not support the rules. TPWD, GBF, NWF, and Sierra Club suggested specific changes to the rulemaking.

Response to Comments

General Comments

Comment

TDA Marine Subcommittee and one individual commented in support of the rulemaking.

Response

The commission acknowledges this comment.

Comment

One individual commented that he is opposed to discharges from desalination facilities along the Texas coast. One individual commented that TCEQ should not take any action to streamline the authorization process for discharges from desalination facilities. One individual commented that wastewater discharges should not be exempt from permit or hearing requirements.

Response

In HB 2031, the legislature declared that: "With this state facing an ongoing drought, continuing population growth, and the need to remain economically competitive, every effort must be made to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water." The legislature also declared that: "In this state, marine seawater is a potential new source of water for

drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." To that end, the legislature stated the purpose of HB 2031 was to "... streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination."

HB 2031, specifically TWC, §18.005(e), instructed the commission to develop rules to provide an expedited procedure for acting on an application for a permit. The bill also identified the procedural components of the permitting process for near-shore discharges, off-shore discharges, and treated marine seawater discharges. Near-shore discharges and treated marine seawater must include notice, public comment, and an opportunity for a public meeting and/or a contested case hearing. However, the process for off-shore discharges must include notice and public comment only. The adopted rulemaking complies with the requirements of HB 2031. No changes were made in response to the comments.

Comment

Two thousand, three-hundred and eleven individuals commented that the proposed rules are not adequately protective of bays and estuaries.

Response

Section 318.1(c) states that this chapter does not apply to discharges into a bay or estuary. A person that intends to discharge waste resulting from the desalination of

marine seawater into a bay or estuary would not be eligible to apply for a permit under the expedited procedures in the adopted rulemaking. In response to this comment, the commission clarified §318.1(c) to identify the types of discharges that are not allowed to be authorized under this chapter.

Comment

Asociacion Amiga, AEM, CCA-Texas, Commissioner Senac, CWA, EVHN, GBF, GEI, NWF, Sierra Club, SMRF, TCA, and Viva! commented that it is critically important that, even as the rules establish a streamlined process, environmental protections are not unduly compromised. Desalination discharges should not be located in sensitive environments without adequate protections.

Response

Although the technical review timeframes are considerably expedited, the reviews for applications processed under the adopted rules will be conducted consistent with existing TCEQ protocols to ensure that the discharge permits are protective of the environment. The expedited timeframes will be accomplished by prioritizing and coordinating staff workloads. The commission is confident that the timeframes can be achieved without sacrificing the quality and thoroughness of the technical review.

The legislature recognized the importance of the location for discharging waste

resulting from the desalination of marine seawater. HB 2031, in TWC, §18.005(f), (g) and (h), prohibits discharges into bays and estuaries and requires a multi-agency coordination to establish appropriate discharge locations in the Gulf of Mexico. Adopted §318.1(c) incorporates the discharge prohibition in bays and estuaries. Adopted §318.9 incorporates the requirement for the applicant to consult with the TPWD and GLO regarding the discharge location(s) until such time that the TPWD and GLO can complete a study to identify appropriate discharge zones and the TCEQ can adopt rules designating appropriate discharge zones. The TPWD and GLO are required to complete the study and provide a report on the results of the study to the TCEQ by September 1, 2018. The TCEQ must adopt rules to designate appropriate discharge zones by September 1, 2020. No changes were made in response to this comment.

Comment

TPWD recommended revising "Texas Parks & Wildlife Department" to "Texas Parks and Wildlife Department."

Response

The commission made the recommended change throughout this adopted chapter.

Comment

Asociacion Amiga, AEM, CCA-Texas, Commissioner Senac, CWA, EVHN, GEI, SMRF, SOS,

Viva! and 1,368 individuals commented that the rules should make explicitly clear that the commission has discretion to deny permit applications for facilities proposed to be located in inappropriate locations that would harm instream uses, water quality, or fish and wildlife habitats.

Response

The commission disagrees with this comment. The executive director's authority to act on an application on behalf of the commission is found in §50.133(a)(2) and is cross-referenced in §318.25 and §318.42. Those sections state that the executive director may act on an application if the application meets all relevant statutory and administrative criteria. If facilities are proposed to be located in inappropriate locations that would harm instream uses, water quality, or fish and wildlife habitats, the application would not meet relevant statutory criteria, and would therefore be technically incomplete and the executive director could not act on the application. Additionally, the process for returning applications because of technical deficiencies is located in §318.22(c) and (e) for treated marine seawater applications and in §318.41(c) and (e) for off-shore discharges. No changes were made in response to this comment.

Comment

EVHN, GBF, NWF, Sierra Club, and TPWD recommended that the requirement for consultation with TPWD and GLO regarding discharge locations be added to §318.3(f).

TPWD also recommended that the requirement be added to §318.61. Asociacion Amiga, AEM, CCA-Texas, CWA, GEI, SMRF, SOS, and Viva! commented that the requirement was not captured in the proposed rules for all proposed discharges.

Response

HB 2031 requires applicants for near-shore and off-shore discharges, but not treated marine seawater discharges, to coordinate with TPWD and GLO regarding the discharge location(s). The requirement in §318.9 for applications to include documentation demonstrating consultation with TPWD and GLO applies to near-shore and off-shore discharges, and is consistent with HB 2031. The commission disagrees that this requirement must be re-stated multiple times within the adopted rules. Having this requirement in only one section of the rule will allow the language to be revised more efficiently in the subsequent rulemaking required by TWC, §18.005(g) to designate appropriate discharge zones. No changes were made in response to these comments.

§318.2, Definitions

Comment

GBF, NWF, Sierra Club, and 2,307 individuals commented that the rule language should better define the starting point for determining the three-mile line that differentiates near-shore and off-shore discharges, specifically as it relates to barrier islands and cuts or passes between barrier islands. The commenters also recommended that the

definition of "Near-shore discharges" should read "less than three miles" instead of "within three miles."

Response

The commission agrees with this comment and revised the definition of "Near-shore discharges" and "Off-shore discharges" in §318.2(7) and (8).

Comment

GBF, NWF, Sierra Club, and TPWD were concerned about declaring in rule that treated marine seawater is not a pollutant discharge especially given that the rule does not require the level of salinity reduction required prior to discharging. The commenters recommended striking that sentence from the definition of "Treated marine seawater" in §318.2(14).

Response

The commission agrees with this comment. The commission did not remove the sentence stating that treated marine seawater is not a pollutant discharge, but instead revised §318.2(14) to include the treatment required by TWC, §18.005(d)(1) and a statement that more stringent treatment may be required by the commission to protect water quality.

§318.3, Application Requirements

Comment

GBF, NWF, and Sierra Club commented that the proximity of discharges to artificial reefs and critical areas, as defined by 31 TAC §501.3, is important information to evaluate potential impacts. The commenters recommended that §318.3(f)(4) be revised to require the map to show the locations of these areas.

Response

The commission disagrees that the proximity of discharges to artificial reefs and critical areas is needed in the discharge permit application. However, this information may be more appropriately provided to, and evaluated by, the TPWD and GLO during the consultation required by §318.9. Following consultation, the applicant is required to provide TCEQ with the results of the consultation. After TCEQ adopts rules designating appropriate discharge zones as required by TWC, §18.005(g), applicants will be required to locate discharges within the discharge zones. No changes were made in response to this comment.

§318.5, Permit Conditions

Comment

GBF, NWF, Sierra Club, and TPWD commented that the proposed rule did not contain the requirement in TWC, §18.005(d)(1) for a person to treat marine seawater so as to meet standards adopted by the commission applicable to the receiving stream or impoundment before discharging the seawater. The commenters recommended that

this requirement be added to the rule.

Response

The commission agrees with this comment and revised §318.5 to require a permit issued under Chapter 318 to meet the requirements of Chapter 307.

§318.9, Discharge Zones for Near-Shore and Off-Shore Discharges

Comment

TPWD commented that §318.9 should require documentation demonstrating consultation with the TPWD and the GLO has been completed. GBF, NWF, and Sierra Club recommended that the rule language be revised to require the application to contain the results of consultation, not just documentation showing that consultation was completed. TCA recommended strengthening the provision for consultation with TPWD.

Response

The commission agrees that the application must include the results of the consultation with TPWD and GLO to ensure that the outfall locations in the application are consistent with the outcome of those consultations. In response to this comment, the commission revised §318.9 as follows: "An application for near-shore discharges or off-shore discharges must contain documentation of the results of consultation with the Texas Parks and Wildlife Department and the Texas

General Land Office..."

§318.22, Application Review for Treated Marine Seawater Discharges

Comment

GBF, NWF, and Sierra Club commented that the rules should make clear that the review period in §318.22(d) will be extended by the amount of time provided to the applicant in §318.22(e) to provide additional information.

Response

The commission disagrees that a revision is needed. The amount of time allotted in §318.22(d) for the technical review is the maximum amount of time for the executive director to review the application and notify the applicant if additional information is needed. The timeframe established by the technical review staff in §318.22(e) for the applicant to provide the additional information is in addition to the time used by the executive director to review the application.

Comment

GBF, NWF, and Sierra Club commented that the technical summary requirements in §318.22(g) should include the quality of treated marine seawater that is proposed to be discharged.

Response

The commission agrees with this comment and revised §318.22(g)(2) to require the technical summary to include information about the quality of treated marine seawater that is proposed to be discharged. The commission also revised §318.41(g)(2) similarly for consistency.

§318.23, Public Meeting

Comment

GBF, NWF, and Sierra Club commented that the county judge of a county in which a facility will be located should also be authorized to request a public meeting. The commenters recommended revising §318.23(c)(2) to include the county judge.

Response

The proposed rule did not contain §318.23(c)(2), therefore, no changes were made in response to this comment. However, the adopted rules allow anyone, including county judges, to request a public meeting on applications for a discharge permit for treated marine seawater. The commission will grant a public meeting in accordance with §55.154(c).

§318.41, Application Review for Off-Shore Discharges

Comment

GBF, NWF, and Sierra Club commented that the rules should make clear that the review period in §318.41(d) will be extended by the amount of time provided to the applicant

in §318.41(e) to provide additional information.

Response

The commission disagrees that a revision is needed. The amount of time allotted in §318.41(d) for the technical review is the maximum amount of time for the executive director to review the application and notify the applicant if additional information is needed. The timeframe established by the technical review staff in §318.41(e) for the applicant to provide the additional information is in addition to the time used by the executive director to review the application.

§318.61, Application Review and Processing for Near-Shore Discharges

Comment

GBF, NWF, and Sierra Club commented that §318.61 should be very clear about how the three-mile determination will be made, especially regarding barrier islands and cuts or passes between barrier islands.

Response

The commission agrees with this comment and added the following sentence to the definitions for "Near-shore discharges" and "Off-shore discharges" in §318.2(7) and (8): "The three-mile boundary shall be determined based on the Texas General Land Office map for the Dispersant Use Pre-Approval Zone or based on a site-specific determination made by the executive director." Additionally, §318.61 was revised

to use the defined term "Near-shore discharges."

**SUBCHAPTER A: GENERAL REQUIREMENTS FOR MARINE SEAWATER
DESALINATION DISCHARGES
§§318.1 - 318.9**

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.013 which establishes the general jurisdiction of the commission; TWC, §5.102 which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103 which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120 which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011 which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the commission in the public interest; TWC, §26.027 and §26.041 which authorize the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state, and to set standards to prevent the discharge of waste that is injurious to the public health; and TWC, §18.005(e) which directs the commission to adopt rules to expedite permitting and related processes for the discharge of both treated marine seawater and waste resulting from the desalination process, in accordance with TWC, Chapter 18.

The adopted rules implement TWC, §18.005 and House Bill 2031 (84th Texas Legislature, 2015).

§318.1. Applicability and Purpose.

(a) The provisions of this chapter establish an expedited process for new, renewal, and amendment applications for treated marine seawater discharges, off-shore discharges, and near-shore discharges that originate from a marine seawater desalination project under Texas Water Code (TWC), Chapter 18. Discharges from a marine seawater desalination project may, alternatively, be authorized under the provisions of TWC, Chapter 26 and Chapter 305 of this title (relating to Consolidated Permits).

(b) Near-shore discharges from marine seawater desalination projects are subject to, and must comply with, §318.9 of this title (relating to Discharge Zones for Near-Shore and Off-Shore Discharges) and Subchapter D of this chapter (relating to Near-Shore Discharges).

(c) This chapter does not apply to discharges of waste resulting from the desalination of marine seawater into a bay, estuary, or fresh waterbody .

§318.2. Definitions.

The definitions contained in Texas Water Code, §26.001 apply to this chapter. The following words and terms, when used in this chapter, have the following meanings.

(1) Affected person--A person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. The determination of whether a person is affected shall be governed by §55.203 of this title (relating to Determination of Affected Person).

(2) Application--A formal written request for commission action relative to a permit, together with all materials and documents submitted to complete the application.

(3) Commission--The Texas Commission on Environmental Quality.

(4) Facility--Includes all contiguous land and fixtures, structures, or appurtenances used for the collection, transportation, and treatment of marine seawater and the storage, transportation, and discharge of treated marine seawater

and wastewater from a marine seawater desalination project. A facility may consist of several storage, processing, treatment, or disposal units.

(5) Marine seawater--Water that is derived from the Gulf of Mexico.

(6) Marine seawater desalination project--An operation that desalinates marine seawater. Marine seawater desalination project does not include other businesses, entities, or operations that do not desalinate marine seawater regardless of whether or not they are associated with the desalination operation by ownership, location, business structure, or business dependencies.

(7) Near-shore discharges--The discharge of wastewater from a marine seawater desalination project into the Gulf of Mexico where the point of discharge is located less than three miles seaward from any point located on the coast of Texas. The three-mile boundary shall be determined based on the Texas General Land Office map for the Dispersant Use Pre-Approval Zone or based on a site-specific determination made by the executive director.

(8) Off-shore discharges--The discharge of wastewater from a marine seawater desalination project into the Gulf of Mexico where the point of discharge is located three or more miles seaward from any point located on the coast of Texas. The three-mile boundary shall be determined based on the Texas General Land Office map

for the Dispersant Use Pre-Approval Zone or based on a site-specific determination made by the executive director.

(9) Operator--The person responsible for the overall operation of a facility.

(10) Outfall--The point or location where treated marine seawater or wastewater is discharged from a marine seawater desalination project into or adjacent to water in the state.

(11) Owner--The person who owns a facility or part of a facility.

(12) Permit--A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified facility for treated marine seawater and reject water discharges.

(13) Site--The land or water area where any marine seawater desalination project is physically located or conducted, including adjacent land or water used in connection with the marine seawater desalination project.

(14) Treated marine seawater--Marine seawater that has been treated to reduce salinity so as to meet standards that are at least as stringent as the water quality standards adopted by the commission applicable to the receiving stream or impoundment. More stringent treatment may be required if the commission determines it is necessary to protect water quality. Treated marine seawater is not a pollutant discharge.

§318.3. Application Requirements.

(a) Any person who requests a permit or who requests an amendment, modification, or renewal of a permit for treated marine seawater discharges or off-shore discharges shall complete, sign, and submit an application to the executive director according to the requirements of this chapter. A permittee shall keep records of data used to complete the final application and any supplemental information throughout the term of the permit.

(b) It is the duty of the owner of a facility to submit an application for a permit. However, if the facility is owned by one person and operated by another, it is the duty of the operator and the owner to jointly submit an application for a permit.

(c) Only one application needs to be filed for each geographical location from which treated marine seawater or wastewater is discharged, even though there may be

more than one outfall requested in the application.

(d) The original and three copies of the permit application shall be submitted on forms provided by or approved by the executive director, and shall be accompanied by a like number of copies of all technical supplements and attachments.

(e) All applications shall be signed in accordance with §305.44 of this title (relating to Signatories to Applications).

(f) Each application for a permit must include the following:

(1) the name, mailing address, and location of the facility for which the application is submitted;

(2) the ownership status as federal, state, private, public, or other entity;

(3) the applicant's name, mailing address, email address, and telephone number;

(4) a topographic map, ownership map, county highway map, or a map prepared by a Texas licensed professional engineer, Texas licensed professional geoscientist, or a registered surveyor which shows the facility and each of its intake

and outfall structures. Maps must be of material suitable for a permanent record, and shall be on sheets 8-1/2 inches by 11 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. The map shall depict the approximate boundaries of the tract of property owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following:

(A) each well, spring, and surface water body or other water in the state within the map area;

(B) the general character of the areas adjacent to the facility, including public roads, towns and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, undeveloped, and so forth; and

(C) the location of any waste disposal activities conducted on the tract not included in the application;

(5) a supplementary technical report submitted in connection with an application. The report must be prepared either by a Texas licensed professional engineer, a Texas licensed professional geoscientist, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the proposed marine seawater desalination project. The report must include the following:

(A) a general description of the facilities and systems used for or in connection with the intake, collection, transportation, and treatment of marine seawater and the storage, transportation, and discharge of treated marine seawater and wastewater; and

(B) for each outfall:

(i) the volume and rate of the discharge of treated marine seawater and wastewater, including daily average flow, daily maximum flow, and detailed information regarding patterns of discharge; and

(ii) the chemical, physical, thermal, organic, bacteriological, or radiological properties or characteristics of the wastewater, as applicable, described in enough detail to allow evaluation of the water and environmental quality considerations involved; and

(6) the applicant shall provide other information as reasonably may be required by the executive director for an adequate understanding of the project, and which is necessary to provide the commission an adequate opportunity to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes.

(g) If the applicant is an individual, the application shall contain:

(1) the individual's full legal name and date of birth;

(2) the street address of the individual's place of residence;

(3) the identifying number from the individual's driver's license or personal identification certificate issued by the state or country in which the individual resides;

(4) the individual's sex; and

(5) any assumed business or professional name of the individual filed under Texas Business and Commerce Code, Chapter 36.

§318.4. Application Fees and Water Quality Fees.

(a) An applicant shall include with each application a fee. The application fee is due at the time that the application is filed with the commission. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the

application fee is paid.

(b) The permit application fees are as follows:

(1) new - \$1,250;

(2) major amendment (with or without renewal) of an existing permit -
\$1,250;

(3) renewal of an existing permit - \$1,215;

(4) minor amendment and minor modification of an existing permit -
\$150.

(c) An annual water quality fee will be assessed against permittees authorized under this chapter in accordance with Chapter 21 of this title (relating to Water Quality Fees).

§318.5. Permit Conditions.

(a) A permit issued under this chapter is subject to the requirements of:

(1) §305.122 of this title (relating to Characteristics of Permits);

(2) §305.123 of this title (relating to Reservation in Granting Permit);

(3) §305.124 of this title (relating to Acceptance of Permit, Effect);

(4) §305.125 of this title (relating to Standard Permit Conditions);

(5) §305.127 of this title (relating to Conditions to be Determined for Individual Permits); and

(6) Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(b) All reports required by permits issued under this chapter and other information requested by the executive director shall be signed in accordance with §305.128 of this title (relating to Signatories to Reports).

§318.6. Amendment of a Permit.

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except corrections to permits under subsection (c)(2)(A) of this section and permit transfers under §318.8 of this title (relating to

Other Permit Actions).

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in §318.3 of this title (relating to Application Requirements). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of treated marine seawater or wastewater if there is neither a significant increase of the quantity of treated marine seawater or wastewater to be discharged nor a material change in the pattern or place of discharge. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

(A) correcting typographical errors;

(B) changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(C) requiring more frequent monitoring or reporting by the permittee;

(D) changing the construction schedule for a discharger. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge; and

(E) deleting an outfall when the discharge from that outfall is terminated and does not change the discharge from other outfalls except within permit limits.

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued; or

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule.

(e) Amendment initiated by the executive director. If the executive director determines to amend a permit, notice of the determination stating the reason for the amendment and a copy of a proposed amendment draft shall be mailed, by United States Postal Service or electronic mail, to the permittee at the last address of record

with the commission.

(f) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(g) Amendment application with renewal. An application for a major amendment to a permit may include a request for a renewal of the permit.

§318.7. Renewal of a Permit.

Any permittee with an effective permit shall submit an application for renewal at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1) An application for renewal shall be in the same form as that required for the original permit application.

(2) An application for renewal shall request continuation of the same requirements and conditions of the expiring permit.

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall be filed in place of an application for renewal.

(4) If an application for renewal is received by the executive director before the permit expiration date, the existing permit will remain in full force and effect and will not expire until commission action on the application for renewal is final.

(5) The commission may deny an application for renewal for the grounds set forth in §305.66 of this title (relating to Permit Denial, Suspension, and Revocation).

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by §318.6 of this title (relating to Amendment of a Permit).

§318.8. Other Permit Actions.

(a) Permit transfer. A permit issued under this chapter is issued to a specific person and may be transferred only upon approval of the commission in accordance with §305.64 of this title (relating to Transfer of Permits).

(b) Permit denial, suspension, and revocation. A permit issued under this chapter does not become a vested right and may be denied, suspended, or revoked in accordance with §305.66 of this title (relating to Permit Denial, Suspension, and Revocation).

(c) Permit cancellation. If a permittee no longer desires to continue the activity authorized under a permit issued under this chapter, or is agreeable to a suspension of authorization for a specified period of time, the permittee should file with the executive director a written request, or a written consent and waiver in accordance with §305.67 of this title (relating to Revocation and Suspension upon Request or Consent). In the absence of a request filed by the permittee or of sufficient consent and waiver, the commission may revoke or suspend a permit in accordance with §305.66 of this title.

(d) Correction to permits. Nonsubstantive changes to a permit issued under this chapter may be made in accordance with §50.145 of this title (relating to Corrections to Permits).

§318.9. Discharge Zones for Near-Shore and Off-Shore Discharges.

An application for near-shore discharges or off-shore discharges must contain documentation of the results of consultation with the Texas Parks and Wildlife Department and the Texas General Land Office regarding the outfall location(s) as required by Texas Water Code, §18.005(h). This provision only applies to new applications and amendment applications that propose a new outfall or a new location for an existing outfall.

SUBCHAPTER B: TREATED MARINE SEAWATER DISCHARGES

§§318.21 - 318.30

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.013 which establishes the general jurisdiction of the commission; TWC, §5.102 which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103 which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120 which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011 which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the commission in the public interest; TWC, §26.027 and §26.041 which authorize the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state, and to set standards to prevent the discharge of waste that is injurious to the public health; and TWC, §18.005(e) which directs the commission to adopt rules to expedite permitting and related processes for the discharge of both treated marine seawater and waste resulting from the desalination process, in accordance with TWC, Chapter 18.

The adopted rules implement TWC, §18.005 and House Bill 2031 (84th Texas Legislature, 2015).

§318.21. Applicability.

This subchapter applies to:

(1) applications to discharge treated marine seawater from a marine seawater desalination project; and

(2) applications for a consolidated permit to discharge treated marine seawater and off-shore discharges.

§318.22. Application Review for Treated Marine Seawater Discharges.

(a) Upon receipt of an application, the executive director or his designee shall assign the application a number for identification purposes.

(b) Applications for permits shall be reviewed by the staff for administrative completeness within five business days of receipt of the application by the executive director.

(c) If an application is received which is not administratively complete, the executive director shall notify the applicant of the deficiencies by email by the end of the five-day review period.

(1) If the additional information is received within five business days of notice of the deficiency, the executive director will evaluate the information within five business days of receipt of the additional information.

(2) If the additional information is not received within five business days of notice of the deficiency, the application shall be considered withdrawn unless there are extenuating circumstances.

(d) After an application is determined by the executive director to be administratively complete, the executive director shall commence a technical review as necessary and appropriate for a period of time not to exceed 30 business days from the date the application is declared administratively complete.

(e) If an application is received which is not technically complete, the executive director shall notify the applicant by email and prior to the end of the 30-day review period of any additional technical material as may be necessary for a complete review.

(1) If the additional information is received within the timeframe established by the technical review staff, the staff will review the additional information to determine if the application is technically complete.

(2) If the additional information is not received within the timeframe established by the technical review staff, and the information is considered essential by the executive director to make recommendations to the commission on a particular matter, the executive director may return the application to the applicant. In no event, however, will the applicant have less than 15 days to provide the technical data before an application is returned. Decisions to return an application during the technical review stage will be made on a case-by-case basis. The applicant has the option of having the question of sufficiency of necessary technical data referred to the commission for a decision prior to having the application returned.

(f) After an application is determined by the executive director to be technically complete, the executive director shall prepare a draft permit consistent with all applicable commission rules, unless a recommendation is made not to grant an application. The draft permit will be filed with the commission to be included in the consideration of the application for permit and is subject to change during the course of the proceedings on the application. The draft permit shall be available for public review.

(g) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The summary shall include the following information, where applicable:

(1) a brief description of the marine seawater desalination project which is the subject of the draft permit;

(2) the quality and quantity of treated marine seawater that is proposed to be discharged;

(3) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(4) reasons why any requested variances or alternatives to required standards do or do not appear justified;

(5) a description of the procedures for reaching a final decision on the draft permit, including procedures by which the public may participate in the final decision; and

(6) the name and telephone number of agency personnel to contact for additional information.

(h) After the draft permit and technical summary are prepared and prior to issuance of public notice, the executive director shall email the draft permit and technical summary to the applicant. The applicant shall have 10 business days to review and provide comment on the draft permit.

(i) Public notice and comment must comply with procedures in §39.902 of this title (relating to Public Notice and Comment for Treated Marine Seawater Discharges).

§318.23. Public Meeting.

(a) Applications for a discharge permit for treated marine seawater shall comply with the relevant public meeting provisions in §55.154 of this title (relating to Public Meetings), except as noted in this section.

(b) New, major amendment, and renewal applications have the opportunity for a public meeting. Minor amendment and minor modification applications are not subject to a public meeting.

(c) Notice of a public meeting must follow the procedures in §39.902(f) and (g)

of this title (relating to Public Notice and Comment for Treated Marine Seawater Discharges).

§318.24. Public Comment Processing.

(a) If timely comments are received, the following procedures shall apply to applications processed under this subchapter:

(1) §55.156 of this title (relating to Public Comment Processing); and

(2) §39.420(a), (b), and (f) of this title (relating to Transmittal of Executive Director's Response to Comments and Decision).

(b) A public comment that is not filed with the chief clerk by the deadline provided in the notice shall be accepted by the chief clerk and placed in the application file but the chief clerk shall not process it.

§318.25. Action by the Executive Director.

Actions by the executive director under this subchapter are subject to the provisions in §§50.133, 50.135, and 50.137 of this title (relating to Executive Director Action on Application or WQMP Update; Effective Date of Executive Director Action;

and Remand for Action by Executive Director, respectively).

§318.26. Motion to Overturn Executive Director's Decision.

A motion to overturn may be filed under this subchapter in accordance with the provisions in §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

§318.27. Request for Contested Case Hearing on an Application.

(a) New, major amendment, and renewal applications have the opportunity for a contested case hearing. Minor amendment and minor modification applications are not subject to a contested case hearing.

(b) Requests for a Contested Case Hearing are subject to the provisions in §§55.201, 55.203, 55.205, and 55.209 of this title (relating to Requests for Reconsideration or Contested Case Hearing; Determination of Affected Person; Request by Group or Association; and Processing Requests for Reconsideration and Contested Case Hearing, respectively).

§318.28. Direct Referrals.

The executive director or the applicant may file a request with the chief clerk that the application be sent directly to the State Office of Administrative Hearings for a hearing on the application, pursuant to the provisions in §55.210 of this title (relating to Direct Referrals).

§318.29. Action by the Commission.

Commission consideration of the following items are subject to the provisions in §§50.113, 50.115, 50.117, 50.119, and 55.211 of this title (relating to Applicability and Action on Application; Scope of Contested Case Hearings; Commission Actions; Notice of Commission Action; Motion for Rehearing; and Commission Action of Requests for Reconsideration and Contested Case Hearing, respectively). The commission may refer an application to the State Office of Administrative Hearings if the commission finds that an applicant's compliance history, as determined under Chapter 60 of this title (relating to Compliance History), raises an issue regarding the applicant's ability to comply with a material term of its permit.

§318.30. Contested Case Hearing Proceedings.

Contested case hearings on applications for discharges of treated marine seawater shall be conducted in accordance with Chapter 80 of this title (relating to Contested Case Hearings).

SUBCHAPTER C: OFF-SHORE DISCHARGES

§§318.40 - 318.43

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.013 which establishes the general jurisdiction of the commission; TWC, §5.102 which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103 which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120 which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011 which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the commission in the public interest; TWC, §26.027 and §26.041 which authorize the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state, and to set standards to prevent the discharge of waste that is injurious to the public health; and TWC, §18.005(e) which directs the commission to adopt rules to expedite permitting and related processes for the discharge of both treated marine seawater and waste resulting from the desalination process, in accordance with TWC, Chapter 18.

The adopted rules implement TWC, §18.005 and House Bill 2031 (84th Texas Legislature, 2015).

§318.40. Applicability.

This subchapter applies to off-shore discharges from a marine seawater desalination project.

§318.41. Application Review for Off-Shore Discharges.

(a) Upon receipt of an application, the executive director or his designee shall assign the application a number for identification purposes.

(b) Applications for permits shall be reviewed by the staff for administrative completeness within five business days of receipt of the application by the executive director.

(c) If an application is received which is not administratively complete, the executive director shall notify the applicant of the deficiencies by email by the end of the five-day review period.

(1) If the additional information is received within five business days of notice of the deficiency, the executive director will evaluate the information within five business days of receipt of the additional information.

(2) If the additional information is not received within five business days of notice of the deficiency, the application shall be considered withdrawn unless there are extenuating circumstances.

(d) After an application is determined by the executive director to be administratively complete, the executive director shall commence a technical review as necessary and appropriate for a period of time not to exceed 30 business days from the date the application is declared administratively complete.

(e) If an application is received which is not technically complete, the executive director shall notify the applicant by email and prior to the end of the 30-day review period of any additional technical material as may be necessary for a complete review.

(1) If the additional information is received within the timeframe established by the technical review staff, the staff will review the additional information to determine if the application is technically complete.

(2) If the additional information is not received within the timeframe established by the technical review staff, and the information is considered essential by the executive director to make recommendations to the commission on a particular matter, the executive director may return the application to the applicant. In no event, however, will the applicant have less than 15 days to provide the technical data before an application is returned. Decisions to return the application during the technical review stage will be made on a case-by-case basis. The applicant has the option of having the question of sufficiency of necessary technical data referred to the commission for a decision prior to having the application returned.

(f) After an application is determined by the executive director to be technically complete, the executive director shall prepare a draft permit consistent with all applicable commission rules, unless a recommendation is made not to grant an application. The draft permit will be filed with the commission to be included in the consideration of the application for permit and is subject to change during the course of the proceedings on the application. The draft permit shall be available for public review.

(g) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The summary shall include the following information, where applicable:

(1) a brief description of the marine seawater desalination project which is the subject of the draft permit;

(2) the sources, quality, and quantity of wastewater that is proposed to be discharged;

(3) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(4) reasons why any requested variances or alternatives to required standards do or do not appear justified;

(5) a description of the procedures for reaching a final decision on the draft permit, including procedures whereby the public may participate in the final decision; and

(6) the name and telephone number of any persons to contact for additional information.

(h) After the draft permit and technical summary are prepared and prior to issuance of public notice, the executive director shall email the draft permit and

technical summary to the applicant. The applicant shall have 10 business days to review and provide comment on the draft permit.

(i) Public notice and comment must comply with the procedures in §39.903 of this title (relating to Public Notice and Comment for Off-Shore Discharges).

§318.42. Action by the Executive Director.

Actions by the executive director under this subchapter are subject to the provisions in §§50.133, 50.135, and 50.137 of this title (relating to Executive Director Action on Application or WQMP Update; Effective Date of Executive Director Action; and Remand for Action by Executive Director, respectively).

§318.43. Motion to Overturn Executive Director's Decision.

A motion to overturn may be filed under this subchapter in accordance with the provisions in §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

SUBCHAPTER D: NEAR-SHORE DISCHARGES

§318.60, §318.61

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.013 which establishes the general jurisdiction of the commission; TWC, §5.102 which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103 which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120 which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011 which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the commission in the public interest; TWC, §26.027 and §26.041 which authorize the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state, and to set standards to prevent the discharge of waste that is injurious to the public health; and TWC, §18.005(e) which directs the commission to adopt rules to expedite permitting and related processes for the discharge of both treated marine seawater and waste resulting from the desalination process, in accordance with TWC, Chapter 18.

The adopted rules implement TWC, §18.005 and House Bill 2031 (84th Texas Legislature, 2015).

§318.60. Applicability.

This subchapter applies to near-shore discharges from a marine seawater desalination project.

§318.61. Application Review and Processing for Near-Shore Discharges.

Near-shore discharges are governed by the Texas Pollutant Discharge Elimination System program. As such, the permitting process for these discharges must comply with Chapters 39, 50, 55, 80, 281, and 305 of this title (relating to Public Notice; Action on Applications and Other Authorizations; Requests for Reconsideration and Contested Case Hearings; Public Comment; Contested Case Hearings; Applications Processing; and Consolidated Permits). The executive director will make every reasonable effort to expedite the administrative and technical reviews, including the use of email for correspondence.